

DOCKET FILE COPY ORIGINAL

**RECEIVED**

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION JUN 16 1998**  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

1998 Biennial Review --  
Streamlining of Mass Media Applications,  
Rules, and Processes

)  
)  
)  
)  
)  
)

MM Docket No. 98-43

**COMMENTS OF**  
**MEDIA ACCESS PROJECT**

Cheryl A. Leanza  
Andrew Jay Schwartzman  
Gigi B. Sohn

**MEDIA ACCESS PROJECT**  
1707 L Street, NW  
Suite 400  
Washington, D.C. 20036  
(202) 232-4300

June 16, 1998

No. of Copies rec'd \_\_\_\_\_  
List A B C D E \_\_\_\_\_

029

## TABLE OF CONTENTS

	<u>Page</u>
SUMMARY .....	iii
INTRODUCTORY STATEMENT	
Putting Citizens First: Why Streamlining Must Be For the Benefit of the Public .....	1
I. Electronic Forms Must be Used to Enhance, and Not Hinder, Public Participation .....	4
II. The Commission Must Not Abdicate Its Responsibility to Collect Information Necessary to Monitor the Industry and Protect the Public Interest .....	7
III. The Commission Must Also Alter Its Public Notice Procedures As Part of the Biennial Review .....	9
IV. Although Electronic Filing is a Good Initiative, the Public's Ability to Evaluate Broadcast Applications Must Not Be Endangered In the Process .....	10
A. Broadcasters Must be Required to Certify they have Read Instructions and Must Retain Worksheets .....	10
B. The Commission Must Require Broadcasters to Submit Contracts or More Detailed Information from Contracts .....	12
1. Yes/No Questions Will Not Elicit Sufficient Information to Evaluate Transactions and Will Shield Important Portions of Transactions from Scrutiny .....	12
2. A Series of Yes/No Questions Will Not Elicit Sufficient Information to Screen Applicants .....	14
3. Collecting this Information is Not a Significant Burden for Broadcasters .....	15
4. Members of the Public can Review Sales Contracts in Lieu of Direct Commission Review .....	15
5. Sales Contracts Must Be Available to Organizations Representing the Public and Not Just In the Broadcaster's Main Studio .....	16
6. If the Commission Does Not Collect Sales Contracts, the Commission Must Collect Additional Information Contained In the Contracts .....	17
C. When Contour Maps Must be Prepared for Other Purposes, They Should Be Made Available to the Public .....	17
V. The Commission's Current Proposal Is Inadequate and May Violate the Letter or the Spirit of the Administrative Procedure Act and the Paperwork Reduction Act Because It Does Not Fully Disclose Changes it Will Make to Forms and Their Instructions .....	18

VI.	The Commission Should Ask Additional Questions About How Broadcasters Are Meeting Their Title III Obligations . . . . .	19
VII.	The Commission Must Follow Through on Its Proposal to Audit Broadcasters . .	20
VIII.	MAP Does Not Oppose the Commission's Proposals for Construction Extension Permit Procedures . . . . .	22
IX.	Ownership Reports Must Be Filed Annually . . . . .	22
	CONCLUSION . . . . .	24

## SUMMARY

The Commission has put forth an excellent proposal to reduce bureaucratic burdens and take full advantage of advances in technology. MAP expects that the Commission will redirect substantial portions of the savings generated to more effective enforcement of remaining requirements, and that broadcasters will be required to share their cost savings with the public in the form of improved program services.

The Commission's proposal, however, contains a few shortcomings that must be remedied. The proposals to utilize an electronic format unnecessarily reduce the amount of information it collects from broadcasters seeking to renew or transfer their licenses. At times, the Commission appears poised to abandon its role as the protector of the public interest in favor of being a passive observer intent only on enhancing the performance of the marketplace. The Commission cannot adequately monitor the industry it is required to oversee if it does not use independent and verifiable sources of information.

Streamlining FCC processes and easing administrative burdens on broadcasters must be for the benefit of the public, whose First Amendment rights are "paramount." Thus, MAP calls upon the Commission to hold explicitly that the dividends of such streamlining should be shared with the public in the form of improved and increased program service.

The most important part of the Commission's proposals is its plan to stop placement of sales contracts in its reference room. MAP opposes this change. The information included in these contracts is critical to understanding the underlying interests at stake when a station changes hands. Because these documents are often highly complex and are not readily analyzed by lay people, the experience of journalists or specialized organizations, such as MAP, are essential

to bring anomalous portions of these contracts to light. These experienced organizations often cannot obtain easy access to stations' main studios and public files. If the Commission does not maintain copies of the contracts, an important source of independent scrutiny will be lost. (See *infra* pp. 12-17.)

To ensure that the benefits of streamlining do not come at the expense of the intended benefactors of the Communications Act -- the public -- the Commission must also:

- Adopt a vigilant auditing program to verify broadcaster applications and maintain its commitment to auditing broadcasters. MAP's prior experience suggests that the promise of audits will be broken, but the blessing of deregulation will endure. (See pp. 20-22.)
- Ask broadcasters questions, which they may answer *voluntarily*, to assess their efforts to identify and meet community needs. (See pp. 19-20.)
- Provide notice and opportunity for comment on all forms intended to implement such new procedures that may be adopted. All too often, the forms promulgation process has been misused to facilitate back door deregulation. The Commission should release the complete version of each form that the Commission proposes to revise. (See pp. 18-19.)
- Retain annual broadcast reporting requirements. (See pp. 22-23.)
- Revise its procedures to give *meaningful and effective* public notice of pending applications and publish *all* staff decisions. (See pp. 9-10).

## COMMENTS OF MEDIA ACCESS PROJECT

Media Access Project ("MAP") respectfully submits these comments in response to the Commission's Notice of Proposed Rulemaking ("*Notice*").

### INTRODUCTORY STATEMENT

#### **Putting Citizens First: Why Streamlining Must Be For the Benefit of the Public**

MAP welcomes the Commission's efforts to ease administrative burdens on the Commission and upon broadcasters. MAP favors adoption of most of the Commission's proposals, and would favor many others with relatively minor modifications.

MAP submits these comments on behalf of the citizens who watch television and listen to radio. It is these Americans who are the intended beneficiaries of the public interest standard under which the Commission regulates broadcasting. It is their First Amendment rights -- not those of broadcasters -- which the Supreme Court has declared to be "paramount":

[T]he people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment. *It is the right of the viewers and listeners, not the right of the broadcasters, which is paramount.*

MAP starts from the premise that streamlining FCC processes and easing administrative burdens on broadcasters benefit the public. The dividend of these changes must, however, be shared with the public. Thus, MAP's support for these changes, and its opposition to a few others (such as the ill-conceived proposal to eliminate submission of sales contracts to the Commission), is based on an expectation that the Commission will redirect substantial portions the savings generated to more effective enforcement of remaining requirements. Of even greater importance, MAP understands that broadcasters will be required to share their cost savings with the public in the form of improved program services.

This is an optimistic posture. Indeed, many would say that optimistic support for deregulation places hope ahead of experience. History suggests that the promise of audits will be broken, but the blessing of deregulation will endure. Past Commission promises to trade increased enforcement and compliance audits for easing regulatory burdens have not always been kept. Indeed, the Commission has only recently revealed that it simply stopped collecting information vital for public scrutiny of cable TV operators without public announcement, much less formal action. *See Annual Report of Cable Television System, Form 325, Filed Pursuant to Section 76.403 of the Commission's Rules, Notice of Proposed Rulemaking, FCC 98-79, CS Docket NO. 98-61 (rel. Apr. 30, 1998) at ¶15.*

*Red Lion Broadcasting Co. v. FCC*, 395 US 367, 390 (1969) (emphasis added).

It is especially important in this context to recognize that the Commission has been more adept at easing regulatory burdens on broadcasters and cable operators than it has been at facilitating the dialog between licensees and citizens upon which the Commission claims to place more and more reliance. Thus, MAP also calls upon the Commission to be clear in specifying that no action it takes should impair citizens' ability to interpose petitions to deny approval of license renewal and assignment applications.

In 1966, then-Judge Warren E. Burger first recognized that citizens have standing to participate in the Commission's broadcast licensing procedures, declaring that "the Commission has always viewed its regulatory duties as guided . . . by our national tradition that public response is the most reliable test of ideas and performance in broadcasting as in most areas of life." *Office*

of *Communication of United Church of Christ v. FCC*, 359 F.2d 994, 1003 (D.C. Cir. 1966).<sup>1</sup>

In concluding that, in addition to Commission staff, interested citizens acting as "private attorneys general" also represent the public interest, Judge Burger rejected "[t]he theory that the Commission can always effectively represent the listener interests . . . without the aid and participation of legitimate listener representatives fulfilling the role of private attorneys general . . . ." *Id.* He declared that "unless the listeners -- the broadcast consumers -- can be heard, there may be no one to bring programming deficiencies or offensive overcommercialization to the attention of the Commission in an effective manner." *Id.* at 1004-5.

Over the last generation, the Commission has exploited Justice Burger's holding by placing ever-greater responsibility on citizens whenever it has sought to justify further regulatory streamlining. Time after time, the FCC has expressed confidence that citizens will alert the Commission to malefactors in their midst. The electronic filing mechanisms adopted here can, and should, enable citizens to have better access to pertinent information while making it easier and cheaper for broadcasters to supply it. To the extent that the Commission's proposals impede rather than facilitate citizen participation, they must be revised.

---

<sup>1</sup> "[I]t is the public in individual communities throughout the length and breadth of our country who must bear final responsibility for the quality and adequacy of television service -- whether it be originated by local stations or by national networks. Under our system, the interests of the public are dominant. The commercial needs of licensed broadcasters and advertisers must be integrated into those of the public. **Hence, individual citizens and the communities they compose owe a duty to themselves and their peers to take an active interest in the scope and quality of the television service** which stations and networks provide and which, undoubtedly, has a **vast impact on their lives and the lives of their children**. Nor need the public feel that in taking a hand in broadcasting they are unduly interfering in the private business affairs of others. On the contrary, **their interest in television programming is direct** and their responsibilities important. **They are the owners** of the channels of television--indeed of all broadcasting." *Id.* quoting *Television Network Program Procurement*, H.R. Rep. No. 281, 88th Cong., 1st Sess. 20 (1963) (emphases added by court).



## **I. Electronic Forms Must be Used to Enhance, and Not Hinder, Public Participation**

As a general matter, MAP supports the Commission's plan to collect broadcast application and licensing information electronically, and to make that information available to the public. Reduced administrative burdens reduce broadcasters' costs and could, if they chose, enable them to devote more resources to public interest and other obligations. Using these administrative savings to defray the costs of broadcaster public interest obligations should directly benefit the public by granting it the benefits of deregulation.

Commission efforts to increase electronic access to its materials will increase public participation in Commission processes. The Commission has recently increased the information available to the public on its web site, proposed allowing the public to file formal and informal comments electronically, and has initiated universal service support to reduce the financial burdens of connecting public libraries to the Internet. The combined effect of these three initiatives will one day allow a citizen to review relevant Commission decisions, review a broadcaster application, and submit comments to Commission staff, all during a visit to her local public library. MAP commends the Commission's efforts to hasten the day when this possibility is a reality.<sup>2</sup>

MAP wishes to raise several initial concerns with respect to the electronic availability of applications. Not only must the Commission use electronic media to ease burdens on broadcasters, the Commission should take the following steps to improve the public's ability to participate

---

<sup>2</sup> This possibility is particularly critical in light of the possibility that the Commission will allow broadcasters to relocate their main studios, and their public files, to locations that may be far from a viewer's home. *See Main Studio Notice of Proposed Rulemaking*, MM Docket 97-138, FCC 97-182 (rel. May 28, 1997).

in Commission proceedings.

*First*, broadcasters that create or maintain Internet "web sites" for business purposes should use them to disseminate information to the public. In addition to current broadcaster obligations under 47 CFR § 73.3580, any broadcaster already maintaining a web site should be required to use its web site to notify the public when it has filed an application with the Commission. Such broadcasters should also be required to provide a hypertext link to the Commission's web site so that members of the public may view its application on-line. Placing this information on a web site will provide a low-cost, simple method to better inform the public of its right to participate in the Commission's processes. MAP does not advocate requiring broadcasters without web sites to create them. For those broadcasters that have chosen to maintain a web site, however, the additional burden of placing a public notice on its site is small indeed.

*Second*, MAP also urges the Commission to encourage broadcasters, whenever possible, to make scanned information or graphical files available via the Internet on a voluntary basis. In addition to applications, broadcasters could also make summaries of their public files available electronically.

*Third*, MAP encourages the Commission to ensure that broadcaster applications are easily retrievable via the Internet. Members of the public must have access to search engines on the FCC's web site that will allow them to locate the electronic applications that they need in a straight-forward manner. The Commission should utilize indexes and field names that will be recognizable to lay people.

*Fourth*, the *Notice* is silent as to how the Commission intends to preserve the integrity

of the electronic archival record broadcasters and the Commission maintain. When compared with physical records, electronic records are more susceptible to alteration without detection. MAP suggests that broadcasters and the Commission clearly preserve and identify any changes to electronic applications. This preservation need not be overly complex. For example, broadcasters and the Commission could preserve both original submissions and amendments by striking out a former answer and underlining a revision. The dates of any amendments must also be recorded, and should be available electronically.

*Fifth*, MAP supports the Commission's proposal to allow members of the public to view applications without being required to provide personal information about themselves. This is a logical extension of current policies on public files.<sup>3</sup> MAP encourages the Commission to take whatever additional steps are necessary to protect the privacy of citizens who view applications. *See Notice* at ¶13.

*Sixth*, MAP shares the concern of the Commission that members of the public who do not yet have access to the Internet remain able to obtain the information they will need to ensure their local television and radio stations are meeting the needs of their communities. Thus, MAP favors requiring broadcasters to include information in a station's public file as an alternative to submitting such information to the Commission. The modest administrative burden of requiring a broadcaster to place hard copies of electronic documents in its public file is more than offset by the benefits of public scrutiny. Any decision that the Commission might make

---

<sup>3</sup> Similarly, the Commission should restate and strengthen its Public Notice defining the manner in which citizens may have access to files. *Availability of Locally Maintained Records For Inspection by Members of the Public*, 28 FCC 2d 71 (1971). In particular, the Commission should warn broadcasters not to harass a citizen reviewing a public file and not to require a citizen to waive her right to file a complaint as a condition of obtaining access to a public file.

to allow broadcasters to relocate their main studios outside their communities of interest, *see Main Studio Notice of Proposed Rulemaking*, MM Docket 97-138, FCC 97-182 (rel. May 28, 1997), would offset further the administrative burden on broadcasters of maintaining information in their public files.

## **II. The Commission Must Not Abdicate Its Responsibility to Collect Information Necessary to Monitor the Industry and Protect the Public Interest**

The Commission must not deprive itself of information necessary to perform its Congressionally-mandated job: to monitor trends and developments in the broadcast industry and ensure that licensees of the public's broadcast spectrum operate in the public interest.<sup>4</sup> The Commission cannot perform its statutory duty in the absence of information. Its proposals to reduce drastically the information it collects will blind the Commission to issues of equity and diversity and leave the Commission unable to protect the viewers that broadcasters do not wish to serve.

The Commission appears sometimes to forget that its job is not comprised solely of preserving a well-functioning economic market. The market, by definition, does not serve all members of society equally. It serves those with the most dollars best. If the Commission's only function were to promote the market, it would be superfluous. It could be folded in to the anti-trust functions of the Department of Justice. Congress has assigned the Commission a greater role. This role cannot be performed by relying on privately-produced data designed to

---

<sup>4</sup> Section 4 of the Communications Act requires the Commission to report annually to Congress. It requires the Commission to include information and data and make legislative recommendations. 47 USC § 154(k). The Commission is further required to include information about the implementation of section 315 of the Communications Act in its annual report. *See* Pub. L. No. 86-274, Sec. 2.

assist marketers and advertisers.

Only the Commission is in the position to acquire information that will identify whether broadcasters are meeting their public interest obligations. Commercial sources of information are inadequate for the Commission's needs for two important reasons. First, they are based on estimates, not actual reported values. Second, this data is not collected to determine whether stations are operating in the public interest. Commercial data designed to provide advertisers with demographic data will necessarily undercount viewers who are not attractive to advertisers. Moreover, commercial data also may incorporate the biases of those who collect it. The advertising industry, for example, has been known to assume -- often falsely -- that Hispanic and African-American viewers and listeners are demographically undesirable.<sup>5</sup> The Commission cannot rely on the data produced for the industry it is supposed to monitor. Data about "unattractive" viewers, citizens and voters regardless of their income, will not be collected unless the Commission does so.

As explained throughout these comments, the Commission must continue to collect sales contracts, must collect ownership reports, must begin to conduct audits, and must ask additional questions to learn about broadcasters' current programming efforts if it is to meet its statutory duty.

---

<sup>5</sup> See Mark Fisher, "The Color of Money: Ethnicity and Advertising," *Washington Post* at E2 (Jun. 16, 1998) (citing an internal memo by a radio advertising firm stating "there is absolutely no need" for advertisers to buy air time on black or Hispanic-oriented radio stations because "advertisers should want prospects, not suspects.") These assumptions often ignore the actual spending habits of viewers. *Id.*

### **III. The Commission Must Alter Its Public Notice Procedures As Part of the Biennial Review**

To facilitate its streamlining goals, the Commission's Mass Media Bureau must revise its procedures to give *meaningful and effective*<sup>6</sup> public notice of pending applications and publish *all* staff decisions. The Commission's failure to propose improved utilization of its own web site resources, and to make a commitment to much more punctilious commitment to notice and publication, is a significant omission in this docket.

As MAP has explained, the Commission can achieve its goal of relieving broadcasters of unnecessary filing burdens only by facilitating citizen access to necessary information in other ways. This requires the Commission to address its own processes as well.

Although technology has greatly facilitated the Mass Media Bureau's management of its dockets and files, and the Commission long ago automated its publication and notice processes, there remain significant and unnecessary flaws which impede public participation in the process. The Commission often fails to insure that the public has complete and timely, as well as meaningful and effective, notice of pending matters with policy significance. Public Notices that, at most, merely indicate a waiver is requested, without identifying why, are of no use to the public. Allowing a tower to be moved a few yards is of little import, while granting a waiver of the national ownership cap is of great significance.

Failure to provide adequate public notice places a burden on Commission and licensee resources because potentially aggrieved parties must sometimes file petitions for reconsideration

---

<sup>6</sup> By "meaningful and effective," MAP refers to the Bureau's continuing failure to provide remotely descriptive, much less complete, information about the nature of requested waivers or where applicants request a change in policy in connection with the prosecution of an application.

or applications for review in those cases. Where adequate notice is given, these matters can often be mediated or resolved without litigation, or in an initial petition to deny process, rather than through reconsideration or review.

These problems are exacerbated by the increasing number of significant staff actions which are not published. This wasteful practice is, to be charitable, at odds with the spirit, and sometimes the letter of the Freedom of Information Act, 5 U.S.C. §§552(b)(1)-(2). That aside, litigation is inevitably more complicated and burdensome when parties attempt to rely on secret agency case law. This is all the more avoidable today, since publication and additional dissemination of decisions on the Internet is cheaper and easier than ever before.

#### **IV. Although Electronic Filing is a Good Initiative, the Public's Ability to Evaluate Broadcast Applications Must Not Be Endangered In the Process**

MAP agrees that the Commission and broadcasters can realize the administrative benefits from electronic filing, and that it may well be necessary to alter FCC application forms to do so. However, this must not, and need not, be done at the expense of enabling citizens to fulfill their right to participate in the Commission's regulatory processes. The public interest requires the Commission to ensure that the public and the press have access to sufficient information to scrutinize adequately broadcaster filings.

##### **A. Broadcasters Must be Required to Certify they have Read Instructions and Must Retain Worksheets**

In the section II.B of the *Notice*, the Commission seeks comment about instructions and worksheets its plans to use to supplement electronic applications. *Notice* at ¶19. MAP agrees that the Commission should require each applicant to certify that it has read the instructions and

fully disclosed any material that may raise a question with respect to full compliance. The Commission should require broadcasters to place their worksheets in their public files and to retain these worksheets for audits. *See infra* Section III. Allowing access to these documents will give members of the public an easy, low-cost method of checking responses to yes/no questions that may raise concerns. For example, if a citizen saw an answer to a yes/no question that did not comport with his experience with a particular station, he could review the worksheet to determine what caused the station to answer the question as it did. Allowing access to these documents will resolve certain disputes quickly, and will allow individuals to identify more serious questions.

The Commission should require broadcasters to retain these documents for a full license term or until such time when an application is final, whichever is later. Broadcasters that have been notified that any portion of an application is under investigation must retain documentation until the investigation is completed. Without the worksheets that provide the basis for broadcasters' electronic applications, auditors will have substantially less information on which to proceed. As indicated above, we further ask the Commission, whenever possible, to encourage broadcasters to make copies of this material available over the Internet. Inexpensive scanners and the availability of graphical software that allows electronic publication of word processor files<sup>7</sup> make this a simple and unburdensome exercise.

---

<sup>7</sup> One example of such software is Adobe, which is used on the Commission's own web site.



**B. The Commission Must Require Broadcasters to Submit Contracts or More Detailed Information from Contracts**

**1. Yes/No Questions Will Not Elicit Sufficient Information to Evaluate Transactions and Will Shield Important Portions of Transactions from Scrutiny**

In section II.B.1.a.(ii) of the *Notice*, the Commission asks whether it should continue to require the seller of a station to submit a copy of the contract and/or agreement for the assignment or transfer of the station and any documents relating to the present or future ownership or control of the licensee or permittee. *Notice* at ¶30.

This is one question for which there is an easy, one-word answer: *Yes*.

The terms and information contained in these contracts is critical to understanding the underlying interests at stake when a station changes hands. As the *Notice* itself observes, "[t]he Commission has used the sales agreement . . . to understand the overall structure of each transaction involving the assignment or transfer of a broadcast authorization" and submission of these agreements "have enabled the Commission to independently verify compliance with various rules, including the Commission's prohibition against reversionary interests, and to ensure that a non-party cannot exercise undue influence over an assignee or transferee." *Notice* at ¶30.

If adopted, the FCC's proposal to stop collecting sales contracts for public inspection in Washington will deal a severe blow to its policy of relying upon petitions to deny what as the main means of enforcing its rules and policies.

A substantial proportion of citizens' petitions to deny assignments or transfers are based, at least in part, upon review of sales contracts. For example, the Commission at one time was -- without issuing any public announcement or any published decision -- tolerating "white knight" transactions for broadcast licenses. In these transactions, an applicant took on a supposed

"limited partner" using coercive "put agreements." These put agreements guaranteed lenders actual control of a station within a short period of time. *Rebecca Radio of Marco*, 4 FCCRcd 830 (1989), *modified* 5 FCCRcd 937 (1990). These arrangements received Commission scrutiny only through petitions to deny filed by members of the public. These petitions could not have been filed without public access to the full sales contract. Because the Commission had not previously prevented these transactions, it would never have asked questions about them in an application form.

Another example of use of sales contracts occurred in *Roy M. Speer*, 11 FCCRcd 18393 (1996). In this case, the applicant was financially dependent on its lender. The parties adopted a routine clause in its lending agreement that required the applicant to carry the lender's TV programming. Counsel for citizens groups relied upon review of the sales contract, and the network affiliation agreements incorporated into the contract, to support allegations that the applicant had effectively transferred control to its lender, a programming network. Significantly, Commission staff entirely overlooked these provisions, and the violation would not otherwise have come to light.

Clauses that typically establish that any party may withdraw from the contract without prejudice after a specified "drop dead" date are another particularly important non-price term in a contract. These clauses may prevent parties to a contract from withdrawing from a contract without prejudice unless they comply with certain conditions. These conditions may contradict Commission policy, such as clauses forbidding discussions with citizens, or a clause limiting a party's ability to receive independent advice through selection of counsel.

## **2. A Series of Yes/No Questions Will Not Elicit Sufficient Information to Screen Applicants**

A series of yes/no questions will be inadequate to scrutinize both applicants who are sophisticated practitioners in the area of broadcast license transfers and applicants who know little about the applicable rules.

There are three separate reasons why yes/no questions cannot supplant full text review of contracts. First, a few unscrupulous applicants will seek to structure agreements so as to obscure or conceal important portions of an agreement. While this will be infrequent, these applicants are precisely the ones that the Commission's processes should be designed to weed out. Eliminating filing of contracts will do just the opposite, and invite the very applicants who lack the character, financial qualifications necessary for independent operation, and other elements required *by statute* of all licensees. *See* 47 USC § 308(b).

Second, other broadcasters or their counsel will, in good faith, adapt to the ground rules set by the Commission and will act in their business interest to withhold as much information from the public domain as possible. By permitting applicants to shield even permissible transactions that would have otherwise received scrutiny, the Commission will, over time, erode its ability and the ability of the public to analyze proposed transactions. This reduced scrutiny will lead to lower levels of compliance with of the Commission's rules.

The third problem is that some applicants submitting information in response to a yes/no electronic form will likely answer questions sincerely, but incorrectly, because they are not aware of the significance of a particular question. Even experienced accountants and attorneys may not perceive the impact of broadcast regulation on ordinary commercial practices. For example, common practices, such as creating a reversionary interest to protect lenders against bankruptcy,

must be treated differently in a broadcasting context. Independent review of a sales contract might reveal an inconsistency that a well-intentioned transactional attorney would not disclose in response to a yes/no question.

**3. Collecting this Information is Not a Significant Burden for Broadcasters**

Collection of information and reduction of burdens are not incompatible goals. Mailing in a copy of a sales contract to the FCC is a small administrative burden for broadcasters. These documents must be prepared as part of normal business procedure. The total additional burden for broadcasters consists of making a photocopy and mailing it to the Commission. After all, it is quite likely that several copies of newly-executed contracts will be mailed or express shipped to shareholders, co-counsel, lenders, and accountants. As long as the Commission must maintain a public reference room, the marginal savings from ceasing collection of sales contracts is small. Nowhere in the Paperwork Reduction Act, or other executive directives to reduce administrative burdens, does anyone imply that administrative agencies should abandon their duties to reduce burdens on industry.

**4. Members of the Public can Review Sales Contracts in Lieu of Direct Commission Review**

The Commission will benefit from collecting sales contracts even if it does not routinely dedicate resources to reviewing them. Members of the press and public will be able to access this information, and thus bring any irregularities to the attention of Commission staff. By ensuring that the contracts in their entirety, or at least certain pieces of information from these contracts, are available to members of the press and the public, the Commission will be able to benefit from significant administrative savings and will benefit from the scrutiny that the press

and public can provide.

The Commission should not wait to make a copy of a contract public until an audit or an irregularity comes to its attention. *See Notice* at ¶32. This will deprive the public of a significant means by which to bring irregularities to the Commission's attention. If broadcasters are required to permit public access to these documents, they may also be more willing to share some information through simple phone calls. Knowing that the information is already public will reduce broadcaster reluctance to share information, thus reducing burdens for all parties involved.

**5. Sales Contracts Must Be Available to Organizations Representing the Public and Not Just In the Broadcaster's Main Studio**

The Commission should continue to maintain copies of contracts in the Commission's public reference rooms and require broadcasters to put the contracts in their public files. These documents contain information that is essential to evaluate a transaction. Such documents, however, are often highly complex and are not readily analyzed by lay people. The expertise of journalists or specialized organizations, such as MAP, is necessary to bring anomalous portions of these contracts to light. These individuals are often not located in a broadcasters' community of interest, and therefore placement in a public file, if the contract is not otherwise available from a distance, does not provide an opportunity for adequate scrutiny.

As a less-desirable alternative to mandating that broadcasters use the Commission reference room, the Commission could also allow each broadcaster to determine, from a list of options, how it intends to make its sales contract publicly available to individuals outside its community. One broadcaster could place the information on its web site, while another might mail copies to individuals who request them, and another might continue to use the Commission

reference room. As the Commission gains experience with broadcaster choices, it may choose to modify how contracts must be made available in the future. For example, the Commission may learn that most broadcasters prefer using the Commission reference room to other methods of dissemination.

**6. If the Commission Does Not Collect Sales Contracts, the Commission Must Collect Additional Information Contained In the Contracts**

If the Commission chooses not to require broadcasters to make their full contracts available to the public, it should collect far more information than currently proposed. The proposed worksheets and electronic forms set forth in the appendices are not complete. It is not necessary for the Commission to reduce completely electronic filings to yes/no questions: nothing about the electronic medium precludes the collection of text and numerical answers. At a minimum, the public needs information that will indicate whether further analysis of an application is required. For example, at a minimum, the price and associated finance terms of the contract should be collected. Non-compete clauses are but one of many such provisions that affect station control and Commission ownership and cross-interest policies. In addition, open-ended inquiries should be made regarding parties who may exercise indirect control over a licensee. *See supra* part II.B.1.

**C. When Contour Maps Must be Prepared for Other Purposes, They Should Be Made Available to the Public**

The Commission should require any station that must prepare a contour map for other purposes to place the map in its public file. *See Notice* at ¶133. As the Commission states, most applicants must prepare a contour map to "meaningfully and accurately complete the worksheet

and answer the related application certification question."<sup>8</sup> *Id.* In addition, broadcasters may need to prepare a contour map for other purposes. Thus, MAP proposes that the Commission include a question in its electronic application that asks whether the applicant has prepared a contour map or has caused a map to be prepared on its behalf. If the answer to this question is yes, the Commission should require the broadcaster to place the map in its public file. Including this information in the electronic application will allow a member of the public to learn whether a contour map is available for inspection. A broadcaster should be required to update its electronic answer if it prepares a map after it files its application with the Commission and be required to place the contour map in its public file at that time.

**V. The Commission's Current Proposal Is Inadequate and May Violate the Letter or the Spirit of the Administrative Procedure Act and the Paperwork Reduction Act Because It Does Not Fully Disclose Changes it Will Make to Forms and Their Instructions**

The Commission has not adequately provided the public with copies of its proposed electronic forms, instructions, and worksheets. The *Notice* includes sample electronic forms and worksheets, but does not include all of the proposed revisions and does not include sample instructions. See *Notice* at ¶20 ("we may consider additional modifications to the forms, related software programs, and electronic filing procedures.") If the Commission, as it states, "view[s] the expanded application form instructions as crucial to this process," *Notice* at ¶19, the Commission should release all of the proposed instructions and worksheets for public comment. MAP wishes to emphasize that the Commission must comply with the requirements of the

---

<sup>8</sup> Contour maps can be used to evaluate compliance with the Commission's duopoly rules and to determine the most distant permissible location of a broadcaster's main studio.

Administrative Procedure Act and the Paperwork Reduction Act in amending any of its information collections. *See* 5 USC § 553; 5 CFR § 1320.11. To comply with the Paperwork Reduction Act, OMB must approve any substantive changes to these collections. The public should be allowed an opportunity to comment on complete proposals -- particularly on the electronic forms that will be the sole source of information to the public under the Commission's proposal.

#### **VI. The Commission Should Ask Additional Questions About How Broadcasters Are Meeting Their Title III Obligations**

As cautioned above, the Commission cannot perform its function as protector of the public interest if it does not collect information about the industry Congress assigned it to monitor. MAP proposes that the Commission collect additional information from broadcasters to determine the steps they are taking to meet the needs of their communities. Voluntary provision of this information would allow the Commission to identify what types of programming broadcasters provide and to monitor trends in coverage over time.

MAP proposes the Commission include the following questions:

1. Do management personnel regularly meet with members of the community to discuss programming?
2. How many hours of these meetings are with fraternal and civic organizations?
3. How many hours of these meetings are with other community leaders?
4. Does the applicant regularly carry local programming other than public service announcements, traffic reports, and weather reports? If so, how many hours per week?
5. How many hours of local coverage in a year is dedicated to natural disasters?
6. For television broadcasters, does the applicant have the ability to originate local programming other than advertising?



7. Does the applicant have a policy of refusing to sell time to all or some categories of non-federal candidates for political office?
8. Does the applicant have a policy of refusing to sell time to parties wishing to discuss an issue the applicant deems to be controversial?

Answers to these questions would provide helpful information without imposing significant burdens on broadcasters. Repeating the same questions year after year would produce more meaningful data that could be subjected to quantitative analysis and could be used to evaluate independent studies. If the Commission fails to ask these questions, it will demonstrate that the Commission does not want to be informed about broadcaster efforts to identify and meet community needs.

## **VII. The Commission Must Follow Through on Its Proposal to Audit Broadcasters**

In part II.C of the *Notice* the Commission announces its intention to conduct formal random audits and seeks comment on how it should implement such audits. *Notice* at ¶48. As noted above, MAP is concerned that the Commission has adopted auditing procedures to accompany deregulatory initiatives in the past, only to eliminate the audits shortly thereafter. In 1981, when the Commission reduced broadcast renewals to a short-form application process, the Commission promised to send random long form applications to ensure that applicants were complying fully with Commission rules. *Radio Broadcast Services: Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees*, Docket No. 80-253, RM-2898, Report and Order, 49 Rad. Reg. 740, 749-50 (1981) ("*1981 Broadcast Application Deregulation Order*"). Only a few years later, in 1984, the Commission perfunctorily eliminated the random audit. *The Revision of Programming and Commercialization*